



Comptroller General
of the United States

1202152

Washington, D.C. 20548

Decision

Matter of: Viewfinders Visual Communications, Inc.

File: B-259054

Date: February 15, 1995

DECISION

Viewfinders Visual Communications, Inc. protests the award of a contract for photographic services to Photography By Beverly under request for proposals (RFP) No. N63394-94-R-0032, issued by the Port Hueneme Division, Naval Surface Warfare Center. The protester complains that the agency failed to furnish it with a copy of the RFP, thereby depriving it of the opportunity to compete.

We dismiss the protest as untimely.

The RFP, which sought to procure photographic services in support of various programs at the Naval Surface Warfare Center for a base period of 1 year and 3 optional years, was synopsisized in the February 11, 1994 Commerce Business Daily (CBD). The agency compiled a bidders list consisting of those firms which had filed a Standard Form (SF) 129 for the relevant Federal Supply Classification (FSC) code, and of those firms responding to the CBD notice. The protester, which had received an interim award for audiovisual (AV) and photographic services at Port Hueneme in December of 1992 and had been an unsuccessful offeror under a 1993 solicitation for AV, photographic, and graphics services, had neither filed an SF 129 for the relevant FSC code nor responded to the CBD notice; it was thus not included on the bidders list. The agency issued the solicitation on May 31 and furnished copies to the 21 bidders on its list. Four proposals were received by the July 28 closing date. On September 20, the agency awarded a contract to Photography By Beverly.

Sometime the following week (i.e., September 26-30), the protester's representative, who had heard rumors of an award, contacted the contracting officer and asked that any award be rescinded so that his company could submit a proposal. The contracting officer maintains that she confirmed that a contract had been awarded and informed the protester's representative that the award would not be terminated and the competition reopened; then, in response to the representative's statement that he intended to pursue

the matter further, she furnished him with the name and telephone number of the Warfare Center's legal counsel. The protester concedes that the contracting officer confirmed the award during this conversation--although it terms the confirmation "precatory"--but maintains that the contracting officer instructed its representative that if he wanted the "final word" on the award or to protest it, he would first have to speak directly with the Warfare Center's counsel. According to the protester, its representative subsequently made a number of unsuccessful attempts to contact the legal counsel (who, it turned out, was out of the office on leave); after 2 weeks, Viewfinders contacted its attorney, who succeeded in contacting the Warfare Center's counsel, who confirmed the award on October 14. Viewfinders protested to our Office on October 20.

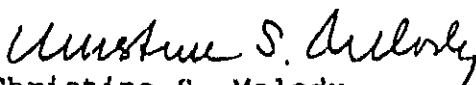
To be timely, a protest such as this one must be filed within 10 days after the basis of protest is known or should have been known, whichever is earlier. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994); Abel Converting Co., 67 Comp. Gen. 201 (1988), 88-1 CPD ¶ 40. Here, at the latest the protester was placed on notice that it had not been solicited for the photographic services at some point during the week of September 26-30, when the contracting officer confirmed that award had been made to another firm. Thus, to be timely, any protest to our Office would have had to be filed by October 17 at the latest. Since Viewfinders did not protest to our Office until October 20, its protest is untimely.

We do not understand, and the protester does not explain, what it means when it refers to the contracting officer's confirmation of the award as "precatory"; to the extent it intends to imply that it regarded the contracting officer's confirmation as other than official, we see no basis for such a view. In this regard, oral notification is sufficient to place a protester on notice of its protest bases, and a protester may not delay filing its protest until receipt of written notification confirming the existence of protestable issues. Servidyne, Inc., B-231944, Aug. 8, 1988, 88-2 CPD ¶ 121.

Further, to the extent that the protester argues that the contracting officer incorrectly advised its representative that he would need to speak with agency counsel prior to filing a protest--advice which the contracting officer categorically denies having given--the fact that a protester may have been incorrectly advised by agency personnel regarding our protest procedures does not waive the procedures. Prospective contractors are on constructive notice of our procedures since they are published in the Code of Federal Regulations and in the Federal Register. Id.

The record in this case further suggests that if the protester had been properly diligent, it would have learned that it had been excluded from the competition prior to the date of award and perhaps have been accorded meaningful relief by the agency. In this regard, we note that the protester faxed a letter to the contracting officer on August 15, in which it noted that it had "come to [its] attention that [it had] not been included for an AV/Photographic RFQ¹ that was put out for solicitation in April 1994 with a closing bid date of May 1994," and had requested an explanation as to why it was not included on the bidders list. In response to the fax, the agency, which interpreted the communication as pertaining to the AV solicitation since it had been issued in April with a closing date in May, issued an amendment to the AV solicitation to reopen the competition; a copy of the amendment, which was dated August 25, was furnished to the protester, and Viewfinders did in fact submit an offer for the AV services. The agency did not furnish the protester with any information regarding the photographic services RFP, however. It seems to us only reasonable that a properly diligent offeror, which, in response to a request for information regarding an AV/Photographic Services solicitation, received a copy of an RFP for AV services only, would have followed up with an inquiry regarding the status of the photographic services procurement. The protester did not follow up with such an inquiry; it did not contact the agency for further information regarding the photographic services RFP until after it heard that the contract had been awarded in late September, by which time amendment of the solicitation to reopen the competition was no longer practicable.

Because Viewfinders did not protest to our Office within 10 days after learning of the award to another firm and because it did not diligently pursue information concerning the status of the photographic services solicitation prior to the award, we dismiss the protest as untimely.


Christine S. Melody
Assistant General Counsel

¹The AV and photographic services, as well as graphics services, had previously been solicited in one consolidated solicitation.